Supreme Court, U.S.
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in the
SUPREME COURT OF THE UNITED STATES
October Term, 1996

David L. C. Hwang, Petitioner,

v.

Robert G. Harris, Anna M. Harris,
and Lori Johnson, Respondents.

On Petition for a Writ of Certiorari
to the Court of Appeal, State of
California, Fourth District,
Division Two

PETITION FOR A WRIT OF CERTIORARI

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127 pp

QUESTION PRESENTED

Whether an Asian American be deprived of his civil rights in a civil lawsuit.

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1996

DAVID L. C. HWANG, Petitioner,

v.

ROBERT G. HARRIS, ANNA M. HARRIS, AND LORI JOHNSON, Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL, STATE OF CALIFORNIA, FOURTH DISTRICT, DIVISION TWO

David L. C. Hwang, an Asian American respectfully petitions for a writ of certiorari to review in this case the opinion of the Court of Appeal, State of California, Fourth District, Division Two.

OPINIONS BELOW

The opinion of the Court of Appeal, issued on November 25, 1996 is unreported.

JURISDICTION

The Supreme Court of the State of

California entered its denial to Appelant 's petition for review on the opinion of the Court of Appeal, State of California, the Fourth District, Division Two on February 19, 1997. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257 (84) and/or (87).

STATUTORY PROVISION INVOLVED

Under the title "Equal Rights Under the Law", Section(a), Chapter 21 - Civil Rights of 42 U.S.C. §1981, it states, " All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefits of all laws and proceedings for the security of persons and property as is enjoyed by white citizens ...".

Actually, the above stated act is associated with the constitutional ques-

tion - 42 U.S.C. §2403. However, this petitioner will not seek the United States government to get involved in this case unless he is urged in so doing.

STATEMENT

A) Nature of the Case:

The complaint consists of four gravamens as described below.

1) Defendants deceived the plaintiff and breached the purchasing agreement about the living space of the purchased house having only 2,592 square feet rather than 3,050 square feet as advertised in their sales brochure and described by the previous owner and agent.

2) Defendants partially concealed from the plaintiff 0.75 shares of water stock of San Antonio Water Company for this property.

3) Defendants deceived plaintiff

with false information that the monthly water cost was as low as about $6 per month for this property in order to induce plaintiff to buy this house. Actually, it was about five to ten times higher than their statement.

4) Defendants failed to transact to plaintiff 1.25 shares of home owner's water stock certificates up to the present time.

The complaint is hence a breach of contract accompanied by a fraudulent conduct. It is supported by all admissible documents and letters from the defendant to plaintiff. If the trial judge could follow the normal trial proceedings and after admissible exhibits submitted to him before the trial on December 12,1994, which had been checked and marked by the court room clerk Ms. Denise L. Furtau were admitted into evidence according to rules governing the evidence admission,

there would be no argument at all. The four gravamens of this complaint would be proved one by one with evidence. The judgment could be reached easily and fairly, if the trial judge would not stand on the defendants' side and tried to help them, but distorted the complaint and discriminated against the plaintiff.

B) Proceedings Below:

After having discovered the real living space of 2,592 square feet and the high cost of water in this residential area and found out their concealment of home owner's water stocks and their failure of transmission of water stock certificates to plaintiff, he then succumbed to a case of buyer's remorse which led to the law suit against the defendants. On June 21, 1990, plaintiff and petitioner in propria persona filed a complaint for damage stemming from the fraud of defendants: Robert G Harris, Anna M. Harris,

and Lori Johnson etc.

At the beginning, due to complicated situation in this case, the trial date had been postponed for many years. Originally, the settlement judge of this case was the Honorable Charles Havens, who had confirmed the trial date on December 9, 1994 at the Mandatory Settlement Conference held on November 9, 1994. The retired judge Kenneth G. Ziebarth was not assigned to this case. Plaintiff had never been informed of his assignment. Unfortunately, on November 23, 1994, he illegally took up this settlement judge position and held a "Trial Management Conference" with the opposing party's counsel Mr. James Klinkert alone without notifying plaintiff to present. That was why on December 8, 1994, plaintiff filed an affidavit of prejudice against Judge Ziebarth and wanted to disqualify him. The court's clerk refused to accept the

plaintiff's application by saying that it was not prepared in a proper form. However, before commencement of the trial on December 12, 1994 (postponed by Judge Ziebarth), plaintiff submitted the proper form "Affidavit of Prejudice" to Judge Ziebarth himself. He should thus be disqualified and replaced according to the California Code of Civil Procedure §170.6 (2), Note 11.

> Los Angeles County Dept. of Public Social Services v. Superior Court for L. A. County, Juvenile Court (1977) 69 CA 3d 407, 138 Cal Rptr 43.

However, Judge Ziebarth said that it was untimely and thus coerced plaintiff into accepting his trial. That was how plaintiff was not ready for trial. Worst of all, Judge Ziebarth did not follow the trial procedures to admit plaintiff-submitted admissible documents into evi-

dence and purposely misled plaintiff into dismayed situation. He found that Mr. Yee, the plaintiff-hired Real Estate Appraiser was not present in the court (Actually, he had been taken deposition at Arbitration Conference in this case). Judge Ziebarth then said, "Unless Mr. Yee is prepared to come in and testify, the Court can not consider that evidence" (Please see Page 22 of Huss' Reporter's Transcript on Appeal for the trial), when plaintiff requested him to admit the Master Appraisal Document from the San Bernardino County Assessor Office into evidence so as to justify the living space of the said property. Evidently, he not only ignored the law, but also deprived plaintiff's civil rights to give evidence and to have proper trial proceedings in so doing. Finally he jumped into a judgment in favor of defendants unsupported by the record and findings, which is in

violation of California Code of Civil Procedure, Section 113, 632, 634, 657, and Evidence Code §354.

In order to reverse this absurd judgment, plaintiff had no other way but to file an appeal to the Court of Appeal of California, Fourth District, Division Two on February 5, 1995.

The three justices of the Court of Appeal assigned to this case completely ignored appellant's application for production of additional evidence in violation of California Rules of Court, Rule 23. The most unbelievable thing is that they withdrew their only approved augmentation of the defendants' Trial Brief as stated in their Tentative Opinion after hearing appellant's argument at the Argument Hearing held on November 6, 1996 because they found that the augmented-evidence would not give defendants any help but would contrarily give them too

much trouble. As a result, they changed their tentative opinion against the statement of their clerk's notice to all related parties and the usual legal practice to affirm the trial judge's judgment, which is in violation of 42 U.S.C. Section 1981. They finally issued an Opinion on November 25, 1996.

In order to file a petition for review to the Supreme Court of California appellant had filed a petition for rehearing to the Court of Appeal first to call its attention to those issues and facts misstated and omitted. However, appellant's petition for rehearing was denied on December 13, 1996. On December 30, 1996, petitioner filed a petition for review to the Supreme Court of California. For some unknown reason, it was denied on February 19, 1997. On March 1, 1997, the petitioner had filed a petition for rehearing to the Supreme

Court of California, but it was returned, because that court does not accept petition for rehearing after the denied petition for review becomes final immediately.

REASONS FOR GRANTING THE PETITION

Strictly speaking, there are only two possibilities for the Supreme Court of California to deny the petitioner's petition for review in this case.

The first possibility is due to the fact that petitioner had raised the question of discrimination against petitioner by the trial judge and three justices assigned to this case, which is a federal issue, the Supreme Court of California may decline to review such an issue. If this is the case, this Cupreme Court has to grant petitioner his petition for a writ of certiorari, because it is a federal issue, which will give jurisdiction to this Court.

Staub v. City of Haxley, Ga. 1958, 78

S.Ct. 277, 355 U.S. 313,2 LEd. 2d 302.

The second possibility is that the Supreme Court of California's denial to petitioner's petition for review is not based on the discrimination question, namely they did not rule on a federal issue, then this Supreme Court will not have jurisdiction on the petitioner's petition for a writ of certiorari. If this is the case, the Supreme Court of California had to consider and grant appellant's petition for review on the opinion of the Court of Appeal, State of California, Fourth District, Division Two, because the appellant had submitted a petition for rehearing to the Court of Appeal after its affirmed opinion and called its attentions to the omitted and misstated issues and facts in this case. According to California Rules of Court, Rule 29(b)(2), the Supreme Court of California should grant appellant his peti-

tion for review. But the Supreme Court of California still denied it. Therefore the Supreme Court of California itself has deprived appellant's civil rights and thus has violated the Civil Rights Act of 1991, i.e. 42 U.S.C. §1981, which will give power to this Supreme Court to consider the issue.

Chambers v. Mississippi, Miss. 1973, 93 S.Ct. 1038, 419 U.S. 284, 35 L.Ed. 2d 297.

Therefore it can be concluded that this Supreme Court should grant the petitioner his petition for a writ of certiorari, no matter whether the complaint itself is a federal question or not,because it had involved a substantial federal issue eventually. In order to give a more explicit and solid explanation, the following reasons for granting the petition will be represented.

1) The Judgment of the Trial Court

and the Opinion of the Court of Appeal in This Case Are Illegal and Erroneous.

The decision of the San Bernardino County Superior Court and the opinion of the Court of Appeal, State of California, Fourth District, Division Two are so departed from the accepted and usual course of judicial proceedings. As has been pointed out in the previous section Proceedings Below" of this petition, the trial judge had intentionally prevented plaintiff from having his admissible domentary exhibits to be admitted into evidence so as to support his complaint. The most unbelievable thing is that the trial judge had admitted into evidence one half of one exhibit (See Page B1-B3) - a notice of assessment of 0.75 shares of water stock by San Antonio Water Company from a total of 53 exhibits submitted to him before trial, which had been checked and marked by the Court Room's

Clerk Ms. Denise Furtau (See Page CT205). The defendants told plaintiff that they only owned two 0.25 shares of water stocks (See Pages B19-B20) with a total of 0.5 shares. However, 0.75 shares is 0.25 shares more than 0.5 shares. Hence this admitted evidence had proved that defendants had concealed at least 0.25 shares of water stock from plaintiff (Actually, they had concealed 0.75 shares of water stock from plaintiff)(See Pages B1-B3), which is enough to manifest that they were guilty of fraud on two out of four gravamens(No.2 and No.4 as mentioned before in this petition). Under their guilty situation, how could the trial judge still made a judgment in favor of defendants? It was really an unprecedent judgment in the history of the United States' judicial system.

Worst of all, the Court of Appeal ignored appellant's application for aug-

mentation and production of additional evidence. The funniest thing is that the three justices assigned to this case withdrew their augmentation of defendants' trial brief and redefined it as an insignificant brief after having heard appellant's argument at the argument hearing held on November 6, 1996. However, their opinion on this complaint was exclusively based upon this insignificant brief nothing else. What does this mean then? It could only indicate that these justices had deprived appellant of his civil rights and did not give him any opportunity to produce evidence crucial to his complaint and jumped into an affirmation of judgment, which must be stopped and corrected by the Supreme Court of the United States. That is why this Court should grant petitioner his petition for a writ of certiorari.

2) The Statements of the Court of

Appeal Contradict with the facts:

On Line 8-9 of Page 12 of the Opinion of the Court of Appeal, it states,"There was no evidence whatsoever offered by plaintiff to prove his case."

The notice of assessment by San Antonio Water Company just mentioned was not an evidence admitted by the trial judge, which was enough to manifest the defendants' guilt of fraud?

They also stated on the second page of their opinion, "However, after a one-day court trial, a judgment was 'entered' December 14, 1994."

Please look through the following records.

a) In the Superior Court Civil Minute Order-11, recorded on 01/18/95,it states, "The judgment has not yet been entered (See CT Page 285.).

b) On Page 21 of Bracamonte's Reporter's Transcript on Appeal for the hearing

held on 01/18/95, Judge Frederick Mandabach said, "Right now Mr. Klinkert is saying there's no judgment."

c) On the same page, Mr. Klinkert said, "I don't believe judgment has been entered yet..."

d) The Deputy Clerk of the Superior Court Ms. Terry Wittenborn justified, " Judgment was still not entered yet by Feb. 9, 1995."

e) The Deputy Clerk of San Bernardino County Eileen Topia stated, "The (Proposed) judgment has not yet been entered ..."dated 03/25/95.

Can three justices deny the above recorded factual statements?

3) The Question Presented Is an Important Federal Issue.

The trial judge will become a district tyrany, if he can make a judgment at his own will without basing upon the law and material fact findings, then

tries his best to keep good relationship or cooperation with the justices of the Court of Appeal to have his whatever judgment affirmed. Under this situation the injustice will prevail. The people will lose their welfare and happiness. The society will fall into a turbulent situation.

Since 1864, the Congress had recognized the importance of civil rights of all peoples in the United States. In 1991, the Civil Rights Act was instituted. Under the title of "Equal Rights under the Law", it asserts, "All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence and to the full and equal benefits of all laws and proceedings for the security of persons and property as is enjoyed by white citizens..."

Under this act all peoples including Asian Americans should have the same right to enter lawsuit and to give evidence in legal proceedings so as to obtain the full and equal benefits of all laws. Why the courts of the State of California treat people differentially? It is believed that this highest court in the United States will not tolerate the unjust ruling of the lower state courts to the aggrieved petitioner.

This case thus provide this Court with an opportunity to resolve this important issue and to suppress the injustice to happen again in this country.

CONCLUSION

The petition for a writ of certiorari should be granted

Respectfully submitted,

David Y.C. Hwang

Dated: May 10,'97 By:David L. C. Hwang
In Propria Persona

COURT OF APPEAL, FOURTH DISTRICT

DIVISION TWO

STATE OF CALIFORNIA

DAVID L. C. HWANG, Plaintiff and Appellant, v. ROBERT G. HARRIS, et al., Defendants and Respondents.	E015972 (Sup.Ct.No.RCV53812) OPINION

APPEAL from the Superior Court of San Bernardino County. Kenneth G. Ziebarth (retired judge of the superior court sitting under assignment by the Chairperson of the Judicial Council) and Frederick Mandabach, Judges. Affirmed.

David L. C. Hwang, in pro. per., for Plaintiff and Appellant.

Ritchie, Klinkert & McCallion, and James E. Klinkert, for Defendants and Respondents.

The record on appeal here is such a

melange of nonsense that it is difficult in terms of the customary structure and content of an appellate opinion, to know where to begin. The notice of appeal, among other things, recites that David L. C. Hwang (plaintiff)"appeal from the (Proposed) Judgment (which) has not yet been entered...." We note in passing that if no judgment has been entered, we have no jurisdiction. However, after a one-day court trial, a judgment was entered December 14, 1994, in favor of Robert G. Harris and Anna M. Harris (defendants). In the text of the judgment, the court indicated that it (the judgment) was " based upon the failure of Plaintiff to be prepared for trial and the complete failure of Plaintiff's proof at trial as to all causes of action in the Third Amended Complaint."

It is impossible, solely by reference to the record on appeal provided by plain-

tiff, to gain a meaningful insight into the origins of or reasons for this litigation. However, after the record on appeal had been lodged with us, plaintiff made an "application" to us for an order authorizing the presentation of evidence as authorized under certain circumstances by section 909 of the Code of Civil Procedure. At the same time, plaintiff moved to augment the record to include a copy of defendants' trial brief. A copy of that document was attached to the application. A ruling on the motion to augment was reserved and such motion will be denied.

Actually, it is only by reference to defendants' trial brief that it became possible to understand how this case found its way into the courts. Although such trial brief did provide an insight into the origins of this litigation, it has no significance in the disposition of

this appeal.

We infer that defendants were prepared at trial to present evidence to support each of the factual circumstances described in their trial brief. However, as it turned out, no such presentation was necessary. After the trial court had failed, despite the exercise of monumental patience(infra), to instill an understanding in this pro se plaintiff of the need to present specific items of evidence to prove the allegations of his complaint, the court gave up. The court then asked counsel for defendants, "Is there a motion?" Thereupon, defendants moved for a judgment of dismissal under section 631.8 of the Code of Civil Procedure. The motion was granted.

The formal judgment, entered December 14, 1994, as above noted, reflected the granting of defendants' motion for a judgment of dismissal. In our view, because

no evidence was offered by plaintiff in support of his third amended complaint, the section 631.8 motion was properly granted. We shall affirm the judgment accordingly.

SYNOPSIS OF TRIAL COURT PROCEEDINGS

Plaintiff's unverified third amended complaint contained seven causes of action. Those counts pleaded against defendants were styled as being for breach of contract, fraud, negligent misrepresentation and breach of the implied convenant of good faith and fair dealing. Plaintiff's alleged grievances arose as the result of his purchase from defendants of a parcel of residential real property at 2524 Prospect Drive, Upland, California, for a total purchase price of $390,000.

More particularly, plaintiff complained that: (1) the size of the interior

living area had been misrepresented; (2) defendants did not timely transfer to plaintiff "existing water stock shares for San Antonio (W)ater (C)ompany"; (3) the neighborhood was beset with "horse related odors"; (4) defendants had failed to advise that the property was not linked to an integrated sewer system.

Plaintiff did not seek rescission but only damages "according to proof".

In defendants' answer to the third amended complaint, they interposed a general denial to all allegations per section 431.30 of the Code of Civil Procedure. They also alleged nine affirmative defenses.

Thereafter, plaintiff, who was then represented by counsel, unleashed a blizzard of discovery forays, i.e., a request for admissions and boilerplate form interrogatories(eight pages of small print).

In the court's order filed July 23,

1992, although it recited that defendant Anna M. Harris had failed timely to respond to the request for admissions, the court inscribed on the face of the order that it was "MOOT" as to whether the truth of the request for admissions would be deemed admitted. The court also inscribed "DENIED" across the provision of the order awarding monetary sanctions.

The record next discloses plaintiff's request for a trial de novo following an adverse arbitration award. About three weeks later, as also disclosed by the record, a minute order was entered reflecting that plaintiff had filed a petition in bankruptcy. Such order recited that "(p)laintiff is in bankruptcy - stay is in effect." About seven months later a copy of an order from the U.S. Bankruptcy Court was filed in the state court proceeding. It recited that the trustee had abandoned as of "no real va-

lue" and "overly burdensome" to the bankrupt estate any claim which plaintiff(the bankrupt) might have had against defendants and others named in the third amended complaint.

Following the bankruptcy trustee's abandonment of plaintiff's case, a case management conference was held at which plaintiff was present. At this conference, the trial court scheduled a mandatory settlement conference for November 9, 1994, a trial management conference for November 23, 2994, a trial assignment calendar for December 9, 1994, and trial for December 12, 1994. The mandatory settlement conference was held on November 9, 1994; plaintiff was present. At the mandatory settlement conference, all existing trial and court dates were confirmed. However, plaintiff failed to appeal for the trial management conference on November 23, 1994. As a result,

plaintiff was given written notice of all further proceedings and informed that the court had scheduled a trial readiness conference for December 8, 1994. Such conference was advanced one day from the original December 9 trial readiness conference. The notice above noted also confirmed the December 12, 1994, trial date. Plaintiff's response to this notice was toserve an "opposition" thereto on defendants' counsel in which plaintiff complained of a lack of notice of the trial management conference but confirmed his failure to request a jury trial as well as his intent to appear at the trial readiness conference. Plaintiff did appear at the trial readiness conference on December 8, 1994, filing the "opposition" referred to above on that date.

On the day of trial,plaintiff attempted to file an affidavit of prejudice against Judge Ziebarth. The attempted fil-

ing was rejected as untimely.

The matter came on regularly for trial on December 12, 1994. Plaintiff appeared in pro per and defendant was represented by counsel. Eighteen pages into the reporter's transcript, defendants, pursuant to section 631.8 of the Code of Civil Procedure, moved for judgment as to the counts for fraud and negligent misrepresentation. That motion was granted, leaving only the breach of contract and bad faith counts.

The hapless colloquy between the court and plaintiff continued. Finally, the court observed, "so apparently you have no evidence to establish that the property was not worth what you paid for it...?" To this plaintiff stated, "I have objection. I don't think it is--actually, today is not the right time because there is another day which I shall bring my evidence, everything here,

because today I originally want just - excuse me - the prejudice of - affidavit of the prejudice to the court. But actually is not today. (¶) I submit it in 8th of December. I have to submit that to the downstair (sic) already. But the court I can not find all the form for the affidavit of prejudice. Everywhere in the court. The supervisor, I have to register the - I submit the objection document as your honor say. But because today I not really - not ready to come here to have the trial, but you force me to have a trial."

Then followed a disputation as to whether the trial was even being properly conducted. Plaintiff's position was that the setting of the trial date was improper because he had not been notified of the trial management conference on November 23, 1994.

Finally, the court had had enough and

and asked, "Is there a motion?" Thereupon, counsel for plaintiff stated, " Your honor, I would move at this time to dismiss the entire action and also to amend the prior motion I made which was granted as to the second and third causes of action based on the unpreparedness of this plaintiff and the lack of any evidence presented this morning as to damages." The motion was granted.

A judgment reflecting the foregoing was later signed and filed. As earlier noted, the judgment recited that it had been granted "based upon the failure of Plaintiff to be prepared for trial and the complete failure of Plaintiff's proof at trial as to all causes of action in the Third Amended Complaint."

Thereafter, defendants moved for an order awarding them attorney fees. About a week later, plaintiff moved to vacate the judgment and for a new trial "by ano-

ther judge." In their opposition to a motion for a new trial, defendants observed that"...Judge Ziebarth's conduct in trial was eminently fair. At the outset, plaintiff was allowed a substantial amount of time to assemble and organize the documentary evidence he failed to prepare prior to commencement of trial. Judge Ziebarth, with the acquiescence of opposing counsel, allowed the pro per Plaintiff to proceed in narrative fashion without having to formally question himself as a witness. Judge Ziebarth, also attempted to elicit testimony from the Plaintiff that might be helpful to the Plaintiff's case when the Plaintiff failed to offer such testimony of his own volition. Indeed, only following the utter failure of Plaintiff's evidence did Judge Ziebarth entertain and grant a motion for judgment in favor of Defendants and against Plaintiff. Certainly, such fair and reasonable conduct

does not constitute the type of great procedural irregularity necessary to support a motion for new trial."

The motion for an award of attorney fees was granted; the amount awarded was $9,000. The motion to vacate the judgment and for a new trial was denied. Both these matters were heard and ruled upon by the trial court in the person of Judge Mandabach. This appeal followed.

DISCUSSION

In pursuing his appeal, plaintiff has made no concise assignments of error. Moreover, most if not all of the material in both his opening and reply briefs deal with matters beyond the record. More particularly, in his opening brief, plaintiff detailed an extended catalogue of facts, evidence of which he wholly failed to present to the trial court.

Referring again to the trial, Judge

Ziebarth was a paragon of patience in his protracted efforts to explain to plaintiff the need to present evidence to support the allegations of his complaint. Several excerpts from the trial court proceedings demonstrate this.

"The Court: Well, what are the water (b)ills now?

"The Witness: Water bill, actually that's too many water bill. I would... maybe any time I will bring it to... I didn't bring those water bill.

"The Court: Today is the date. If you are claiming damages as a result of an increase in your water bill, we have to know exactly what damages you are claiming and what documents you are referring to.

"The Witness: That's... I was sorry. Because too many. All the... I can bring the later or any time you request them after the trial.

"The Court: You need them right now.

"The Witness: Right now, I don't have the...

"The Court: Then you are not going to prevail on any claim for any increase in water bill if you don't have evidence here.

"The Witness: I do have evidence. Because too many. I don't know which one you want to base upon, your honor. Is hard for me to bring all the water bill. Monthly water bill is different. Sometimes $60, Sometimes $65, sometimes $75, $78 even.

"The Court: You need to make a schedule. You have an engineering background. You should know how to schedule things.

"The Witness: Yeah. However, I just tell approximately. Approximately my average is about $65 an hour.

"The Court: That isn't going to cut it. We need specific evidence.

"The Witness: Specific evidence, I didn't bring all those bill with me."

Later in the proceedings:

"The Court: Again, as to the discrepancy in measurements, what damages do you claim you sustained assuming that there was a discrepancy in the square footage of the house?

"The Witness: That discrepancy between...

"The Court: What damages did that cause you, if any?

"The Witness: (No audible response.)

"The Court: Were you forced to sell the house at a lower price than you purchased it?

"The Witness: No, because like I told you already, my monthly payments was increased. It cost me the loss of financial gift situation.

"The Court: How was your monthly payment increased?

"The Witness: My monthly payment, if this is such as the...totally the price for purchasing the home is $390,000 but, however, I have the down payment about 90..something, and about a hundred thousand dollars... for my down payment. But if the price is going down, I don't need to borrow $290,000 from the bank. The amount of my monthly payment will be much lesser than originally, about $242.

"The Court: But what proof do you have that the house wasn't really worth the 393,000 or so, whatever you paid for it, at the time you purchased it?

"The Witness: No, it is written...it is originally not worth it, $390,000, according to the county recorder's office that record marked on here."

Yet later:

"The Court: Have you obtained any appraisal from an expert appraiser which indicates that the house was not worth

what you paid for it at the time you purchased it?

"The Witness: Yeah, That's why Mr...I know the opposing party has the...another appraisal.

"The Court: But where is yours? What number?

"The Witness: Mine is Mr. Gee...

"....

"The Court: Okay. Is the person that prepared that appraisal prepared to testify as to the results of his or her investigation of the property, comparables, et cetera?

"The Witness: The person, he appraiser. He is expert in this area. He...

"....

"The Court: Is that person prepared to testify today as to the results of his appraisal?

"The Witness: Yeah, that's correct.

"The Court. Where is he?

"The Witness: Oh, no, he didn't come here.

".....

"The Court" It is hearsay.

"The Witness: No hearsay. I believe this is...anyway, I can justify...use another thing to justify, okay?

"The Court: Unless Mr. Gee is prepared to come in and testify, the court can not consider that evidence.

"The Witness: But in case the...okay. In case the opposing party, they have given us an appraisal.

"The Court: They would have to bring in their expert(,) too.

"The Witness: Okay. Then where is the opposing party's appraisal?

"The Court: He may not figure he need it at this point.

"Mr. Hwang: No, I can use it as a...

"The Court: Both of them are hearsay. Unless there is a stipulation that an ap-

praisal can come into evidence by both parties, it is inadmissible. It is hearsay. So apparently you have no evidence to establish that the property was not worth what you paid for it at the time you purchased it?"

In responding to the appeal, defendants contend that there was substantial evidence to support the judgment of dismissal. Such contention misses the mark. There was no evidence whatsoever offered by plainiitiff to prove his case.

It almost goes without saying that there is no California appellate decision which deals with what happened here,i,e., where a plaintiff doggedly refuses to present evidence to prove his case in the trial court and, after suffering judgment, yet goes ahead and appeals. In a sense, what happened here was tantamount to a default, e.g., that which occurs when a defendant fails to appear

at trial, although here the circumstance is reversed. The principle remains; if a contestant does not show or shows and fails to present any evidence, he loses.

However, we see nothing improper in defendants' making a motion for judgment under section 631.8 of the Code of Civil Procedure. Surely, if the court has the power to dismiss a plaintiff's action because the evidence is insufficient to prove the material allegations of the complaint (see, for example, Rodriguez v. North American Rockwell Corp. (1972) 28 Cal. App.3d 441, cited with approval in Robert H. Jacobs, Inc. V. Westoaks Realtors, Inc. (1984) 159 Cal.App. 3d 637, 642), then a fortiori, if a plaintiff presents no evidence at all, the trial court's power to dismiss surely obtains.

Plaintiff complains of a variety of perceived injustices perpetrated against him before the case went to trial. None

of these, even if meritorious (which we do not concede), had any effect in prejudicially hindering plaintiff from presenting his case at trial. Thus, we need not address them. As noted, the trial judge, in our view, did everything conceivably possible to afford plaintiff a chance to present his case. However, plaintiff remained preoccupied with perceived irregularities occurring before trial and hence frittered away the fair opportunity afforded him to present his evidence.

DISPOSITION

The judgment is affirmed. All motions made by plaintiff since filing the appeal and reserved to this time are denied, including his motion that we take judicial notice of defendants' trial brief.

NOT FOR PUBLICATION

/s/ McDANIEL

J*

We Concur:

/s/ RAMIREZ

P.J.

/s/ McKINSTER

J.

* Retired Associate Justice of the Court of Appeal sitting under assignment by Chairperson of the Judicial Council.

COURT OF APPEAL, FOURTH DISTRICT

DIVISION TWO

STATE OF CALIFORNIA

DAVID L. C. HWANG, Plaintiff and Appellant,	E015972 (Sup.Ct.No.RCV53812)
v.	County of San Bernardino
ROBERT G. HARRIS, et al., Defendants and Respondents.	

THE COURT:

Appellant's petition for rehearing is DENIED.

RAMIREZ

Presiding Justice

Dated: Dec. 13, 1996

cc: See attached list.

COPY

Fourth Appellate District, Division Two
No. E015972 S058182

IN THE SUPREME COURT OF CALIFORNIA

DAVID L. C. HWANG, Appellant

v.

ROBERT G. HARRIS Et Al., Respondents

Appellant's petition for review DENIED.

Dated: FEB 19,97

GEORGE

Chief Justice

James E. Klinkert
Ritchie, Klinkert & McCallion
3281 E. Guasti R'd, Suite 850
Ontario, California 91761

Attorneys for Defendants
Robert G. Harris and Anna M. Harris

IN THE

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

DAVID L. C. HWANG, Plaintiff, vs. ROBERT G. HARRIS, et al., Defendants and Respondents.	CASE NO: RCV053812 [redacted] JUDGMENT FOLLOWING COURT TRIAL Date: December 12,94 Time: 9:30 a.m. Dept: 9

This matter came on regularly for court trial on Monday, December 13, 1994, in Department RCV-9 of the above-entitled Court, the Honorable Kenneth G. Ziebarth, Judge presiding. Plaintiff David L. C. Hwang appeared in pro per. Defendants Robert G. Harris and Anna M. Harris appeared through their attorney, James E.

Klinkert of Ritchie, Klinkert & McCallion.

Upon presentation of Plaintiff's case, Defendants Robert G. Harris and Anna M. Harris made a motion for judgment in favor of Defendants and against Plaintiff as to all causes of action in the Third Amended Complaint, based upon the failure of plaintiff to be prepared for trial and the complete failure of Plaintiff's proof at trial as to all causes of action in the Third Amended Complaint. The motion was granted. Therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff David L. C. Hwang take nothing by his complaint, and that Defendants Robert G. Harris and Anna M. Harris recover their costs of suit.

Dated: 12/14/94

Kenneth G. Ziebarth
Judge of the Supeior
Court (Retired)

PROOF OF SERVICE
1013A(3) CCP

STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

I am employed in the County of San Bernardino, State of California.

I am over the age of 18 and not a party to the within action, my business address is 3281 Guasti Rd., #850, Ontario, California 91761.

On December 13, 1994, I served the foregoing document described as:

(PROPOSED) JUDGMENT FOLLOWING COURT TRIAL

by placing the true copies thereof enclosed in sealed envelopes addressed as follows:

DAVID L. C. HWANG
IN PRO PER
650 GILBUCK DR
ANAHEIM CA 92802

by mail

I deposited such envelope in the mail at Ontario, California.

envelop was mailed with postage thereon fully prepaid.

Executed on December 13, 1994, at Ontario, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

_____

KIM PEREZ

COURT OF APPEAL

STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

** REMITTITUR **

DAVID L. C. HWANG, Plaintiff and Appellant, v. ROBERT G. HARRIS, et al., Defendants and Respondents.	E015972 (Sup.Ct.No.RCV53812) County of San Bernardino

I, STEPHEN M. KELLY, Clerk of the Court of Appeal, State of California Fourth Appellate District, certify the attached is a true and correct copy of the original opinion or decision entered in the above entitled cause on November 25, 1996 and this opinion or decision has now become final.

Respondent to recover costs on appeal.

Witness my hand and seal of the Court this February 25, 1997.

Stephen M. Kelly, Clerk

By KELLY CONN
Deputy Clerk

cc: All parties (Copy of remittitur only, Rule 25(e), California Rules of Court)

COPY

SUPREME COURT OF CALIFORNIA

ROBERT F. WANDRUFF
Court Administrator and
Clerk of the Supreme Court

3 March 1997

David L. C. Hwang
P. O. Box 50691
Irvine, CA 92619-0691

Re: S058182 - Hwang v. Harris, et al.

Dear Sir:

No action may be taken on your "Petition for Rehearing", received today. The order of this Court filed February 19, 1997, denying your petition for review in the above-entitled matter was final forth with and may not be reconsidered. Please rest assured, however, that the entire court considered the petition for review and the contentions made therein and that the denial expresses the court's decision in this matter.

Very truly yours,

ROBERT F. WANDRUFF
Court Administrator and
Clerk of the Supreme Court

By: John C. Rossi
Assistant Clerk-Administrator

cc: James E. Klinkert

OFFICE OF THE CLERK

COURT OF APPEAL

STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

NOTICE

Enclosed is the tentative opinion of a majority of the panel of three justices hearing the appeal. In this case the court has determined that the facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument. The court is therefore willing to submit this case without oral argument.

Based on the foregoing:

(1) Waiver of oral argument: Counsel must notify this court if he or she wishes to waive oral argument pursuant to California Rules of Court, rule 22. Failure to do so will be deemed a waiver of oral

argument, and the cause will be submitted at that time.

(2) Reconfirmation of oral argument: Counsel must reconfirm his or her initial decision requesting oral argument pursuant to California Rules of Court,rule 22.

(3) Counsel shall advise opposing counsel of his or her decision and so advise the calendar clerk of this court, by telephone at (909)383-4833, not later than 2 p.m. on the Friday prior to the scheduled oral argument calendar.

(4) Should counsel desire that the matter remain on the oral argument calendar, each party will limited to 15 Minutes of argument. Because the panel of Justices has read and studied the briefs, discussed the case, and has a tentative opinion before it, you will not be permitted to repeat the arguments set forth in your brief.

(5) No continuances of oral augument

will be permitted on stipulation of the parties without an order of approval by the court.

Failure to comply with this notice may result in the imposition of sanctions.

COURT OF APPEAL, FOURTH DISTRICT

DIVISION TWO

STATE OF CALIFORNIA

DAVID L. C. HWANG, Plaintiff and Appellant,	E015972 (Sup.Ct.No.RCV53812)
v.	TENTATIVE OPINION
ROBERT G. HARRIS, et al., Defendants and Respondents.	

APPEAL from the Superior Court of San Bernardino County. Kenneth G. Ziebarth, Judge. (Retired judge of the superior court sitting under assignment by the Chairperson of the Judicial Council.) Affirmed.

David L. C. Hwang, in pro. per., for Plaintiff and Appellant.

Ritchie, Klinkert & McCallion, and James E. Klinkert, for Defendants and Respondents.

The record on appeal here is such a

melange of nonsense that it is difficult in terms of the customary structure and content of an appellate opinion, to know where to begin. The notice of appeal, among other things, recites that David L. C. Hwang(Plaintiff) "appeals from the (proposed) judgment (which) has not yet been entered...." We note in passing that if no judgment has been entered, we have no jurisdiction. However, after a one-day court trial, a judgment was entered December 14, 1994, in favor of Robert G. Harris and Anna M. Harris (defendants). In the text of the judgment, the court indicated that it (the judgment) was "based upon the failure of plaintiff to be prepared for trial and the complete failure of plaintiff's proof at trial as to all causes of action in the third amended complaint."

It is impossible, solely by reference to the record on appeal provided by plai-

ntiff, to gain a meaningful insight into the origins of or reasons for this litigation. However, after the record on appeal had been lodged with us, plaintiff made an "application" to us for an order authorizing the presentation of evidence as authorized under certain circumstances by section 909 of the Code of Civil Procedure. At the same time, plaintiff moved to augment the record to include a copy of defendants' trial brief. A copy of that document was attached to the application. A ruling on the motion to augment was reserved and such motion will be granted.

Actually, it is only by reference to defendants' trial brief that it became possible to understand how this case found its way into the courts. A copy of this trial brief is attached as an appendix.

We infer that defendants were prepared

to present evidence to support each of the factual circumstances described in their trial brief. However, as it turned out, no such presentation was necessary. After the court had failed, despite the exercise of monumental patience (infra), to instill an understanding in this pro se plaintiff of the need to present specific items of evidence to prove the allegations of his complaint, the court gave up. The court then asked counsel for defendants, "Is there a motion?" Thereupon, defendants moved for a judgment of dismissal under section 631.8 of the Code of Civil Procedure. The motion was granted.

The formal judgment, entered December 14, 1994, as above noted, reflected the granting of defendants' motion for a judgment of dismissal. In our view, because no evidence was offered by plaintiff in support of his third amended

complaint, the section 631.8 motion was properly granted. We shall affirm the judgment accordingly.

SYNOPSIS OF TRIAL COURT PROCEEDINGS

Plaintiff's unverified third amended complaint contained seven causes of action. Those counts pleaded against defendants were styled as being for breach of contract, fraud, negligent misrepresentation and breach of the implied covenant of good faith and fair dealing. Plaintiff's alleged grievances arose as the result of his purchase from defendants of a parcel of residential real property at 2524 Prospect Drive, Upland, California, for a total purchase price of $390,000.

More particularly, plaintiff complained that: (1) the size of the interior living area had been misrepresented. (2) defendants did not timely transfer

to plaintiff "existing water stock shares in San Antonio Water Company," (3) the neighborhood was beset with "horse odors"; (4) defendants had failed to advise that the property was not linked to an integrated sewer system.

Plaintiff did not seek rescission but only damages "according to proof".

In defendants' answer to the third amended complaint, they interposed a general denial to all allegations per section 431.30 of the Code of Civil Procedure. They also alleged nine affirmative defenses.

Thereafter, plaintiff who was then represented by counsel, unleashed a blizzard of discovery forays, i.e. a request for admissions and boilerplate form interrogatories (eight pages of small print).

In the court's order filed July 23, 1992, although it recited that defendant

Anna M. Harris had failed timely to respond to the request for admissions, the court inscribed on the face of the order that it was "MOOT" as to whether the truth of the request for admissions would be deemed admitted. The court also inscribed "DENIED" across the provision of the order awarding monetary sanctions.

The record next discloses plaintiff's request for a trial de novo following an adverse arbitration award. About three weeks later, as also disclosed by the record, a minute order was entered reflecting that plaintiff had filed a petition in bankruptcy. Such order recited that"(p)laintiff is in bankruptcy - stay is in effect." About seven months later a copy of an order from the U.S.Bankruptcy Court was filed in the state court proceeding. It recited that the trustee had abandoned as of "no real value" and "overly burdensome" to the bankrupt estate any claim

which plaintiff (the bankrupt) might have had against defendants and others named in the third amended complaint.

Following the bankruptcy trustee's abandonment of plaintiff's case, a case management conference was held at which plaintiff was present. At this conference, the trial court scheduled a mandatory settlement conference for November 9 , 1994, a trial assignment calendar for December 9, 1994, and trial for December 12, 1994. The mandatory settlement conference was held on November 9, 1994; plaintiff was present. At the mandatory settlement conference, all exist ing trial and court dates were confirmed. However, plaintiff failed to appear for the trial management conference on November 23, 1994. As a result, plaintiff was given written notice of all further proceedings and informed that the court had scheduled a trial readiness confer-

ence for December 8, 1994. Such conference was advanced one day from the original December 12, 1994, trial date. Plaintiff's response to this notice was to serve an "opposition" thereto on defendants' counsel in which plaintiff complained of a lack of notice of the trial management conference but confirmed his failure to request a jury trial as well as his intent to appear at the trial readiness conference. Plaintiff did appear at the trial readiness conference on December 8, 1994, filing the "opposition" referred to above on that date.

On the day of trial, plaintiff attempted to file an affidavit of prejudice against Judge Ziebarth. The attempted filing was rejected as untimely.

The matter came on regularly for trial on December 12, 1994. Plaintiff appeared in pro per and defendant was represented by counsel. Eighteen pages into the re-

porter's transcript, defendants, pursuant to section 631.8 of the Code of Civil Procedure, moved for judgment as to the counts for fraud and negligent misrepresentation. That motion was granted, leaving only the breach of contract and bad faith counts.

The hapless colloquy between the court and plaintiff continued. Finally, the court observed, "so apparently you have no evidence to establish that the property was not worth what you paid for it...." To this plaintiff stated, "I have objection. I don't think it is.. actually, today is not the right time because there is another day which I shall bring my evidence, everything here, because today I originally want just..excuse me.. the prejudice of.. affidavit of the prejudice to the court. But actually is not today. (¶) I submit it in 8th of December. I have to submit

that to the downstair already. But the court I cannot find all the form for the affidavit of prejudice. Everywhere in the court. The supervisor, I have to register the..I submit the objection document as your honor say. But because today I not really..not ready to come here to have the trial, but you force me to have a trial."(RT23)

Then followed a disputation as to whether the trial was even being properly conducted. Plaintiff's position was that the setting of the trial date was improper because he had not been notified of the trial management conference on November 23, 1994.

Finally, the court had had enough and asked, "Is there a motion?" Thereupon, counsel for plaintiff stated, "Your honor, I would move at this time to dismiss the entire action and also to amend the prior motion I made which was granted as to the

second and third causes of action based on the unpreparedness of this plaintiff and the lack of any evidence presented this morning as to damages." (RT24-25) The motion was granted.

A judgment reflecting the foregoing was later signed and filed. As earlier noted, the judgment recited that it had been granted because "of the failure of plaintiff to be prepared for trial and the complete failure of Plaintiff's proof at trial as to all causes of action in the Third Amended Complaint."

Thereafter, defendants moved for an order awarding them attorney fees. About a week later, plaintiff moved to vacate the judgment and for a new trial "by another judge." In their opposition to a motion for a new trial, defendants observed that "...Judge Ziebarth's conduct in the trial was eminently fair. At the outset, Plaintiff was allowed a substan-

tial amount of time to assemble and organize the documentary evidence he failed to prepare prior to commencement of trial. Judge Ziebarth with the acquiescence of opposing counsel, allowed the pro per Plaintiff to proceed in narrative fashion without having to formally question himself as a witness. Judge Ziebarth also attempted to elicit testimony from the Plaintiff that might be helpful to the Plaintiff's case when the Plaintiff failed to offer such testimony of his own volition. Indeed, only following the utter failure of Plaintiff's evidence did Judge Ziebarth entertain and grant a motion for judgment in favor of Defendants and against Plaintiff. Certainly, such fair and reasonable conduct does not constitute the type of great procedural irregulrity necessary to support a motion for new trial."(CT273)

The motion for an award of attorney

was granted; the amount awarded was $9,000. The motion to vacate the judgment and for a new trial was denied. Both these matters were heard and ruled upon by the trial court in the person of Judge Mandaback. This appeal followed.

DISCUSSION

In pursuing his appeal, plaintiff has made no concise assignments of error. Moreover, most if not all of the material in both his opening and reply briefs deals with matters beyond the record. More particularly, in his opening brief, plaintiff detailed an extended catalogue of facts, evidence of which he wholly failed to present to the trial court.

Referring again to the trial, Judge Ziebarth was a paragon of patience in his protracted efforts to explain to plaintiff the need to present evidence to support the allegations of his com-

plaint. Several excepts from the trial court proceedings overwhelmingly demonstrate this.

"The Court: Well, what are the water wills now?

The Witness: Water bill, actually that's too many water bill. I would... maybe any time I will bring it to..I did not bring those water bill.

"The Court: Today is the date. If you are claiming damages as a result of an increase in your water bill, we have to know exactly what damages you are claiming and what documents you are referring to.

"The Witness: That's..I was sorry. Because too many. All the..I can bring the later or any time you request them after the trial

"The Court: You need them right now.

"The Witness: Right now, I don't have the..

"The Court: Then you are not going to prevail on any claim for any increase in water bill if you don't have evidence here.

"The Witness: I do have evidence. Because too many. I don't know which one you want to base upon, your honor. Is hard for me to bring all the water bill. Monthly water bill is different. Sometimes $60, sometimes $65, sometimes $75, $78 even.

"The Court: You need to make a schedule. You have an engineering background. You should know how to schedule things.

"The Witness: Yeah. However, I just tell approximately. Approximately my average is about $65 an hour.

"The Court: That isn't going to cut it. We need specific evidence.

"The Witness: Specific Evidence, I didn't bring all those bill with me."

Later in the proceedings:

"The Court: Again, as to the discrepancy in measurements,what damages do you claim you sustained assuming that there was a discrepancy in the square footage of the house?

"The Witness That discrepancy between..

"The Court: What damages did that cause you, if any?

"The Witness (No audible response.)

"The Court: Were you forced to sell the house at a lower price than you purchased it?

"The Witness: No, because like I told you already, my monthly payments was increased. It cost me the loss of financial gift situation.

"The Court: How was your monthly payment increased?

"The Witness: My monthly payment, if this is such as the..totally the price for purchasing the home is $390,000 but,

however, I have the down payment about 90-something, and about a hundred thousand dollars, for my down payment. But if the price is going down, I don't need to borrow $290,000 from the bank. The amount of my monthly payment will be much lesser than originally, about $242.

"The Court: But what proof do you have that the house wasn't really worth the 393,000 or so, whatever you paid for it, at the time you purchased it?

"The Witness: No, it is written..it is originally not worth it, $390,000, according to the county recorder's office that record marked on here."(RB5-6)

Yet later:

"The Court: Have you obtained any appraisal from an expert appraiser which indicates that the house was not worth what you paid for it at the time you purchased it?

"The Witness: Yeah, That's why Mr..

I know the opposing party has the..another appraisal.

"The Court: But where is yours? What number?

"The Witness: Mine is Mr. Gee..

.....

"The Court: Okay. Is the person that prepared that appraisal prepared to testify as to the results of his or her investigation of the property comparables, et cetera?

"The Witness: The person, he appraiser. He is expert in this area. He..

.....

"The Court: Is that person prepared to testify today as to the results of his appraisal?

"The Witness: Yeah, that's correct.

"The Court: Where is he?

"The Witness: Oh, no, he didn't come here

.....

"The Court: It is hearsay

"The Witness: No, hearsay. I believe this is..anyway, I can justify..use another thing to justify, okay?

"The Court: Unless Mr. Gee is prepared to come in and testify, the court cannot consider that evidence.

"The Witness: But in case the..okay. In case the opposing party, they have give us an appraisal.

"The Court: They would have to bring in their expert(,) too.

"The Witness: Okay. Then where is the opposing party's appraisal?

"The Court. He may not figure he needs it at this point.

"Mr. Hwang: No, I can use it as a..

"The Court: Both of them are hearsay. Unless there is a stipulation that an appraisal can come into evidence by both parties, it is inadmissible It is hear-say. So apparently you have no evidence

to establish that the property was not worth what you paid for it at the time you purchased it?" (RB6-7)

In responding to the appeal, defendants contend that there was substantial evidence to support the judgment of dismissal. Such contention misses the mark. There was no evidence whatsoever offered by plaintiff to prove his case.

It almost goes without saying that there is no appellate decision which deals with what happened here, i.e., where a plaintiff doggedly refuses to present evidence to prove his case in the trial court and, after suffering judgment, yet goes ahead and appeals. In a sense, what happened here was tantamount to a default, e.g., that which occurs when a defendant fails to appear at trial, although here the circumstance is reversed. The principle remains, if a contestant does not show, he loses.

However, we see nothing improper in defendants' making a motion for judgment under section 631.8 of the Code of Civil Procedure. Surely, if the court has the power to dismiss a plaintiff's action because the evidence is insufficient to prove the material allegations of the complaint(see, for example, Rodriguez v. North American Roskwell Corp.(1972) 28 Cal.App.3d 441, cited with approval in Robert H. Jacobs, Inc. v. Westoaks Realtors(1984) 159 Cal.App. 3d 637,642), then a fortiori, if a plaintiff present no evidence at all, the trial court's power to dismiss surely remains.

Plaintiff complains of a variety of perceived injustices perpetrated against him before the case went to trial. None of these, even if meritorious(which we do not concede), had no effect in prejudicially hindering plaintiff from presenting his case at trial. Thus we

need not address them. As noted, the trial judge, in our view, did everything conceivably possible to afford plaintiff a chance to present his case. However, plaintiff remained preoccupied with perceived irregularities occurring before trial and hence frittered away the fair opportunity afforded him to present his evidence.

DISPOSITION

The judgment is affirmed. All motions made by plaintiff since filing the appeal and reserved to this time are denied except that we take judicial notice of defendants' trial brief. That motion is granted.

David L. C. Hwang
In Propria Persona
P. O. Box 50691
Irvine, CA 92619
Tel.(714) 544-9582

COURT OF APPEAL, STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT, DIVISION TWO

DAVID L. C. HWANG Plaintiff and Appellant, v. ROBERT G. HARRIS, et al., Defendants and Respondents.	E015972 (Sup.Ct.No.RCV53812) 'ORAL' ARGUMENT PREPARED FOR THE ARGUMENT HEARING AND DEMURRERS TO THE "TENTATIVE OPINION" OF THREE JUSTICES OF THIS HEARING AND POINTS AND AUTHORITIES IN SUPPORT OF DEMURRERS.

TO THE COURT AND RELATED PARTIES:

I. 'ORAL' ARGUMENT PREPARED FOR THE ARGUMENT HEARING:

It is fortunate to have the Panel of three justices hearing the appeal to augment the defendants' "Trial Brief" into evidence. Based upon this evidence plus the one admitted by the trial judge, it will be enough for the appellant to over-

throw the illegal judgment made by the trial judge and to request the panel to reverse the "Tentative Opinion". The reasons may be explained in the following paragraphs. However, please understant that the above conclusion drawn from these two pieces of evidence should not be mixed up with the argument based upon the factual statements (not evidence based) as put down in Appellant's "Opening Brief".

(1) Please look at Page 5 of the Trial Brief (now as an evidence), the opposing counsel said, "Mr. and Mrs. Harris owned two one-quarter shares (a total of 0.5 shares) of water stock in San Bernardino Water Company with respect to the property."

The trial judge Ziebarth had admitted into evidence one of the plaintiff-submitted 53 exhibits, Exhibit No. 31 - the Notice of Assessment fromSan Antonio Wa-

ter Company for 0.75 shares of water stock as is shown on Page 12 of Ms. Huss' Reporter's Transcript on Appeal.

However, the 0.75 shares of water stock is 0.25 shares more than the 0.5 shares of water stock. Thus Mr. and Mrs. Harris had concealed an extra of 0.25 shares of water stock from the appellant, which is enough to manifest their guilt of fraud already, because this fraud had been established with evidence. Your Honor, under their guilty situation, you can no longer affirm the judgment now.

Actually, defendants owned two certificates for two water meters, with a total of 1.25 shares of water stocks. They had transferred to the appellant only 0.5 shares of water stock and concealed 0.75 shares, which constitutes a fraud.

(2) The statement of two one-quarter shares of water stock also confirm-

ed the two copies of water stock certificates given to the plaintiff by the defendants. These two certificates are being submitted to you here. However, as justified above the defendants owned at least 0.75 shares of water stock. The two certificates with 0.25 shares each are forged. The defendants thus not only violated the civil law, but the criminal law.

(3) Until now, the appellant has not received the two copies of original real stock certificates yet. Under this situation, the defendants had committed another fraud violation.

(4) On Lines 24 and 25 of Page 5 of the counsel's trial brief, he said, "Importantly, the delay in providing the water stock certificates had no impact on plaintiff." Does the counsel know that the monthly water bill is dependant upon how many shares of water stock the home owner owned? Can the counsel say that it

is not an issue relevant to the complaint?

(5) On Lines 17,18, and 19 of Page 6 of the same brief, it states, "Plaintiff's cause of action for fraud fails because he was not damaged and there were no fraudulent representation." Plaintiff's substantial damages caused by defendants' fraud have been clearly stated partially on No. 4 and No. 6 of the above argument. The actual damages can be found in the plaintiff's "Opening Brief" easily. There is no need to occupy an ample time and space here during this 15 minutes limited time argument.

(6) On Lines 21,22, and 23 of Page 3 of the same brief, it states, "The successful purchaser at the sale paid $440,000.00 for the property - some $50,000.00 more than plaintiff had paid for the property."

Can the counsel prove it? If he can not prove it, he was telling a lie and

wanted to distort the fact so as to win the case by means of fraudulent conduct, which will result in a guilt of fraud on the court in addition to the violation of California State Bar Rules Standard 2.3.

Wise v. Nirider (1993), Mont., 862 P.2d 1128, 1132.

II. DEMURRERS TO THE "TENTATIVE OPINION" OF A MAJORITY OF THE PANEL OF THREE JUSTICES AT APPEAL HEARING AND THEIR POINTS AND AUTHORITIES IN SUPPORT OF THEM.

(1) The trial Judge Is Prejudicial and Discriminating Against the Plaintiff.

On Line 13 of Page 7 of this "Tentative Opinion", it states, "Judge Ziebarth 's conduct in the trial was eminently fair." On Lines 17 and 18 of the same page, it states, "Judge Ziebarth also attempted to elicit testimony from the plaintiff that might be helpful to the

plaintiff's case...."

Please look at Page 7 of the defendant's "Respondents' Brief", Judge Ziebarth said, "Unless Mr. Yee, the plaintiff-hired Real Estate Appraiser (who was absent at the trial, because he had been taken deposi~ tion at our Arbitration Conference already) is prepared to come in and testify, the Court can not consider that evidence." Based upon which rule the trial judge could take such a prejudicial and discriminating attitude toward plaintiff? As mentioned before, the judge said, "The best evidence is the document itself." Why he did not follow the normal trial proceedings to admit these documents into evidence first? Evidently, he was trying hard to help the defendants and ignored plaintiff's exhibits submitted to him for admission into evidence. That is why the plaintiff did not have

evidence to prove defendants' fraud. His attitude toward the plaintiff was so discriminative that it definitely will give plaintiff an unjusticed and partial judgment in violation of 1981 Civil Rights Act.

(2) The Majority (Two) of the Three Honorable Justices Are Also Prejudicial and Discriminating Against the Plaintiff.

On Lines 7 and 8 of Page 3 of this "Tentative Opinion" the justices erroneously confirmed the trial judge's judgment to grant defendants' motion for a judgment of dismissal without obtaining findings of fact and admitting important exhibits into evidence by applying the first part of Section 631.8 of California Code of Civil Procedure, but ignored its second part to decline to render any judgment until the close of all evidence. This will justify the fact that the justices just know to recite the defendants'

one sided story as is states on Lines 19 and 20 of Page 2 of this opinion, which states, "Actually, it is only by reference to defendants' trial brief...."

The justices further quoted Section 909 of California Code of Civil Procedure as to authority to take additional evidence only under certain circumstance as is stated on Lines 13, 14, and 15 of Page 2 of this opinion, but hesitated to use the California Rules of Court, Rule 23(b) or Section 5:190 of the California Code of Business and Professional, which states where documentary evidence is offered, either party may submit the original, a certified copy, or a photocopy, and the court may admit the document in evidence and add it to the record on appeal. For example, the "Master Appraisal Document" and "Residential Building Record" etc. of the San Bernardino County Assessor's Office

and Document No. 94222603 of San Bernardino County Recording Office recorded on 05/13/94 should be admitted into evidence upon the plaintiff's offering and requesting. But only half of one exhibit, Exhibit No. 31 of 53 exhibits submitted to the trial judge as checked and marked by his Court Clerk had been admitted into evidence. This erroneous exclusion of evidence is "fundamentally unfair" for purposes of federal habeas relief, because the evidence was material in the sense that it was crucial, critical, and highly significant.

Porretto v. Stalder, (1987), C.A. 5 (La). 834 F 2d 461, 465.

On Page 8 of this opinion under the heading of "Discussion", it states, "More particularly, in plaintiff's opening brief, plaintiff detailed an extended catalogue of facts, evidence of which he wholly failed to present to the trial

court." On Lines 14 and 15 of Page 12 of the same opinion it states, "There was no evidence whatsoever offered by plaintiff to prove his case." Actually, the plaintiff had offered a total of 53 exhibits to the trial judge before trial on 12/12/94 as mentioned before. Most of them are documents. Your Honors, here is the previously submitted exhibits list to the trial judge. Without checking the County Clerk's Transcript, how could the majority of three justices say that the plaintiff failed to present them to the trial judge? How could the justices said that most of the material deals with matters beyond the record? Is it true that a justice can say anything which he likes to without concerning about its consequence due to his special position?

(3) The Trial Court Was Confused and Mixed up with the Functions of Various Conferences:

The date for Trial Management Conference is not set at the Case Management Conference according to San Bernardino County Superior Court Rules (SBCSCR),Rule 309 and it is set at the Manadatory Settlement Conference by the Settlement Judge according to SNCSCR Rule 311. In this case, the Settlement Judge is The Honorable Charles S. Havens, not Judge Kenneth G. Ziebarth. The latter had no authority to set a date on Nov. 23, 1994 for our Trial Management Conference. Therefore, the Trial Management Conference held on November 23, 1994 was illegal. The statement depicted on Lines 7, 8 and 9 of Page 5 of this opinion is of no basis. Furthermore, this trial Management Conference was held by Judge Ziebarth and the defendants' counsel only, the plaintiff was not present. Under this situation, this conference must be postponed to a later date according to SBCSCR, Rule

346. The trial judge and the counsel failed to do so. That was their fault in violation of the above mentioned court rules.

(4) The Opposing Counsel Always Likes to Argue Something Without Any Basis.

The opposing counsel had submitted a list of exhibits to the trial court for admission into evidence. Your Honors, why don't admit his Exhibits Nos. 16,17,18, and 19 into evidence so that he can use them to back up his argument?

On Line 1 of Page 6 of his "Trial Brief", he said, "There is no square footage discrepancy.". If Your Honors will admit into evidence his Exhibit No. 19 - the defendants' appraisal report for this house, you will easily find that the discrepancy is 3050 - 2672 = 378 Square Feet. What can he say about this indication? If based upon the County Assessor's Appraisal Report, the discrepancy is equal to 3050 - 2592 = 458 Square

Feet. Can you deny it?

III. CONCLUSION

For the reasons stated above, the appellant requests that the demurrers to the tentative opinion should be sustained and the tentative opinion itself be reversed.

Respectfully submitted,

David L. C. Hwang

Dated:Nov. 6,1996 By: David L. C. Hwang
In Propria Persona

DAVID L. C. HWANG
In Pro Per
650 Gilbuck Drive
Anaheim, CA 92802
(714) 758-8482
(818) 330-5903

SUPERIOR COURT OF THE STATE OF CALIFORNIA

THE COUNTY OF SAN BERNARDINO

DAVID L. C. HWANG, Plaintiff, vs. ROBERT G. HARRIS, ANNA M. HARRIS, LORI JOHNSON, AND JOHNSON REALTY, ET. AL., Defendants.	CASE NO: RCV53812 AFFIDAVIT OF PREJUDICE (CCP S.170.6)

TO THE COURT:

DAVID L. C. HWANG, the plaintiff in pro per deposes and says: that he is in the within action: that the Honorable Kenneth Ziebarth, presiding in Department 9 of the San Bernardino County Superior Court, West Valley Division, is prejudiced against the plaintiff or the interests of the plaintiff so that

affiant cannot, or believes that he can not, have an impartial hearing or tiral before the said judge.

The plaintiff declares under penalty of perjury that the foregoing is true and correct.

Dated this 12th day of December, 1994 at Rancho Cucamonga, California.

David L. C. Hwang

David L. C. Hwang
In Pro Per

DAVID L. C. HWANG
In Pro Per
650 Gilbuck Drive
Anaheim, CA 92802
(714) 758-8482 or
(818) 330-5903

SUPERIOR COURT OF THE STATE OF CALIFORNIA

THE COUNTY OF SAN BERNARDINO

DAVID L. C. HWANG, Plaintiff, vs. ROBERT G. HARRIS, ANNA M. HARRIS, LORI JOHNSON, AND JOHNSON REALTY, ET. AL., Defendants.	CASE NO: RCV53812 APPLICATION FOR DISQUALIFICATION OF HONORABLE JUDGE, KENNETH ZIEBARTH TO PRESIDE OVER THE CASE OF RCV 53812 AND MOTION REQUESTING CONTINUANCE OF TRIAL, AND DECLARATION OF DAVID L.C. HWANG.

TO THE COURT:

The plaintiff, David L. C. Hwang has to apply for the disqualification of Honorable Judge, Kenneth Ziebarth to preside over the case of RCV053812 due to the following reasons.

1. The Honorable Judge, Kenneth Ziebarth held a "Trial Management Conference with the defendants' counsel James

Klinkert alone on November 23, 1994 without notifying the plaintiff and made a ruling by listening to defendants attorney's one side story only.

2. The Honorable Judge, Ziebarth set the case for trial on December 12, 1994 at 9:30 a.m. in Department 9 of the Court also without asking the plaintiff's opinion at the trial setting conference held on December 8, 1994. The court clerk of Department 9 after this conference told plaintiff that the judgment is final and can not be appealed, if $175 of reporter fee for each party for each trial day is not paid in advance before trial.

This non-appealing rule due to without paying reporting fee in advance is not found in the 'Rules of the Superior Court for the County of San Bernardino.

3. The Honorable Judge, Ziebarth allowed the defendants' lawyer, James Klinkert to help Lori Johnson and Johnson

Realty get rid of the case without justification and notification in advance, which is in violation of the judge's duty and responsibility to handle a case with fair attitude and justice.

4. The plaintiff found that Honorable Judge, Kenneth Ziebarth made above ruling with a contempt attitude and biased manner toward the plaintiff.

The plaintiff concerns this case will be judged with a judicial prejudice under his presiding and thus requests the Court to make a substitution and postpone the trial to an earliest available court date within next month.

Respectfully submitted,

Dated:Dec. 8, 1994 By: David L.C. Hwang

David L. C. Hwang
In Pro Per

DECLARATION OF DAVID L. C. HWANG

I, David L. C. Hwang declares under penalty of perjury:

1. I am the plaintiff, David L. C. Hwang and I am acting as my own attorney in the case of David L. C. Hwang v. Robert G. Harris et. al. (Case No: RCV53-812).

2. I prepare this application for substitution of the Judge and make a motion for continuance of the trial to be set for the earliest available court date within next month.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: Dec. 8, 1994 Signed:

David L. C. Hwang

David L. C. Hwang
In Pro Per

NOTICE OF

ASSESSMENT BY SAN ANTONIO WATER COMPANY

SAN ANTONIO WATER COMPANY -
LOCATION OF PRINCIPAL OFFICE
139 NORTH EUCLID AVENUE, UPLAND, SAN
BERNARDINO COUNTY, CALIFORNIA 91786

0.75 SHARES-AMOUNT $ 37.50

NOTICE IS HEREBY GIVEN that a meeting of the Board of Directors of San Antonio Water Company, a corporation held on the 17th day of Oct., 1988, an assessment (N° 231) of $50.00 per share was levied upon the shares of said corporation, payable immediately to the secretary of said corporation, at the office of said corporation at 139 North Euclid Avenue, in Upland, San Bernardino County, California. Any shares upon which this assessment remains unpaid on the 30th day of November 1988, WILL BE DELINQUENT and unless payment be made prior to the delinquency, the said shares or as many of them as

may be necessary, WILL BE SOLD at the said office at said corporation 139 North Euclid Avenue, Upland, California, on the 30th day of December 1988, at the hour of nine o'clock a.m. of such day to pay delinquent assessment, together with a 5% penalty and any other charges that may be against the stock.

L T. DILLEY

Secretary of SAN ANTONIO WATER COMPANY
Office located at 139 North Euclid Avenue
Upland, California 91786

NOTICE OF

ASSESSMENT BY SAN ANTONIO WATER COMPANY

SAN ANTONIO WATER COMPANY -
LOCATION OF PRINCIPAL OFFICE
139 NORTH EUCLID AVENUE, UPLAND, SAN
BERNARDINO COUNTY, CALIFORNIA 91786

0.50 SHARES-AMOUNT $ 25.00

NOTICE IS HEREBY GIVEN that a meeting of the Board of Directors of San Antonio Water Company, a corporation held on the 15th day of Oct., 1990, an assessment (N 233) of $50.00 per share was levied upon the shares of said Corporation, payable immediately to the secretary of said Corporation, at the office of said Corporation at 139 North Euclid Avenue, in Upland, San Bernardino County, California. Any shares upon which this assessment remains unpaid on the 28th day of November 1990, WILL BE DELINQUENT and unless payment be made prior to the deliquency, the said shares or as many of them as

may be necessary, WILL BE SOLD at the said office at said Corporation 139 North Euclid Avenue, Upland, California, on the 28th day of December 1990, at the hour of nine o'clock a.m. of such day to pay deliquent assessment, together with a 5% penalty and any other charges that may be against the stock.

L. T. DILLEY

Secretary of SAN ANTONIO WATER COMPANY

Office located at 139 North Euclid Avenue

Upland, California 91786

October 6,1988

David L. C. & Helen P. Hwang
2524 ½rps½ect Drive
Upland, California 91786

Dear David & Helen:

You are located in the county and therefore you obtain water from the San Antonio Water Co. at 139 N. Euclid Ave., Upland, Calif.

The water Stock certificates that I had orginally turned over to Home Savings of America as that is where I owed a balance at the time you purchased the home, were lost by Home Savings. They are working with the water company to eventually issue water stock in your name as the owner of 2524 Prospect Drive. You have two water meters and that is why you always receive two bills.

I have enclosed a copy of the original water stock certificates and also the current bill for water at your home.

I paid approximately $1300.00 for the one water meter in the rear of property and therefore it is in your best interest to keep your water bill paid currently or you would be faced with purchasing more stock to continue service.

I have contacted both Clover Escrow & Home Savings on this date and they are working on getting the water stock out of my name and into yours.

If you have any questions please contact me.

Yours very truly,

R. G. Harris

November 5, 1988

David & Helen Hwang
2524 Prospect Drive
Upland, Calif. 91786

Dear David & Helen:

I have once again enclosed the current water bill on your home and also the assessment for the water shares on the property.

I spoke with the water company yesterday and they stated that Home Savings & Loan has contacted them and that the stock should soon be into your name. I am sorry for this temporary problem but it will be taken care of shortly. I had no control over this problem but am following it very closely to make sure that it is solved.

I have enclosed my check for $12.50 of this assessment as that is on my lot. Please remit $25.00 for your share and the 6.87 and 31.75 to cover your water bill.

If you have any questions please call me.

Yours very truly,

R. G. Harris
5180 Holt Blvd.,
Montclair, Calif.
91763

EXHIBIT.

THE COURT: BUT YOU ARE GOING TO HAVE TO OFFER IT INTO EVIDENCE TO ESTABLISH THAT.

THE WITNESS: THE WATER SHARE HAS THE POINTS,3. THE SELLER TELL ME THE WATER SHARE WAS THE ONLY. ACTUALLYNERE ACCORDING TO THE NOTICE OF ASSESSMENT BOX SAN ANTONIO WATER COMPANY, THEY HAVE ONE METER. THEY HAVE .075 SHARES. THEY HAVE ABOUT.

THE COURT: WHAT DOCUMENT ARE YOU REFERRING TO?

THE WITNESS: THIS IS ABOUT 31, EXHIbit 31.

MR. KLINKERT: AGAIN, YOUR HONOR, IF HE IS REFERRING TO THAT AND READING IT, I AM GOING TO OBJECT TO IT ON THE GROUND THAT IT"S HEARSAY.

THE COURT: WELL, THE BEST EVIDENCE IS THE DOCUMENT ITSELF. IS THERE ANY QUESTION AS TO AUTHENTICITY AS TO 31?

MR. KLINKERT: MAY I APPROACH, YOUR

HONOR?

THE COURT: SURE, TAKE A LOOK AT IT.

THE WITNESS: .75 SHARES FOR ONE METER.

THE COURT: 31 WILL BE RECEIVED.

THE WITNESS: OKAY. I SHOULD TELL YOUR HONOR...

THE COURT: WILL, WHAT ARE THE WATER WILLS NOW?

THE WITNESS: WATER DILL, ACTUALLY,THAT IS TOO MANY WATER BILLS. I WOULD MAYBE ANY TIME I WILL BRING IT TO.. I DIDN'T BRING THOSE WATER BILLS

THE COURT: TODAY IS THE DATE. IF YOU ARE CLAIMING DAMAGES AS A RESULT OF AN INCREASE IN YOUR WATER BILL, WE

SANDRA VAN HUSS, C.S.R.

So what I'm saying is I can't see any irregularity here that's a basis for a new trial. And if there is one and I missed it, you haven't presented it for me to see. So maybe you need to get some legal help. Because times running now. If this matter continues on the way it is if you want someone to review Judge Ziebarth's work to see if he made a mistake at trial you have to file a Notice of Appeal and follow up on that. These are difficult things for attorneys and even more difficult for a person representing himself.

MR. HWANG: Can you, Your Honor, will you tell me when can I file an appeal?

THE COURT: Well, you file it within the time period after the judge has entered ..

MR. HWANG: From the end of the case.

THE COURT: Right now Mr. Klinkert is saying there's no judgment. But what

I'm seeing is a judgment signed by Judge Ziebarth on December 14th. I don't see the entry of judgment yet or the notice of entry of judgment.

MR. HWANG: There's no entry either.

MR. KLINKERT: Your Honor ..

MR. HWANG: That's illegal. Also illegal because I have never received any ..even a notice of the judgment, a final judgment by the honorable Judge Ziebarth. I have never known the judgment of Judge Ziebarth, which has never been entered into the .. entered into the document file.

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* This page is reproduced from 'Reporter's Transcript on Appeal' prepared by Georgia A. Bracamonte, CSR On 05/31/95.

TODAY AS TO THE RESULTS OF HIS APPRAISAL?

THE WITNESS: YEAH, THAT'S CORRECT.

THE COURT: WHERE IS HE?

THE WITNESS: OH, NO, HE DIDN'T COME HERE.

THE COURT: YOU HAVE TO SUBPOENA HIM BECAUSE THE REPORT ITSELF IS HEARSAY. BUT THE AUTHOR OF THE REPORT CAN TESTITY AS TO WHAT INFORMATION HE OR SHE GATHERED IN THE PROCESS OF PREPARING THE REPORT.

THE WITNESS: HE HAS .. WE HAVE TO SUBMIT THE EXHIBIT HERE. I DON'T UNDERSTAND WHY THEY HAVE TO ..

THE COURT: IT IS HEARSAY.

THE WITNESS: NO HEARSAY. I BELIEVE THIS IS .. ANYWAY, I CAN JUSTIFY .. USE ANOTHER THING TO JUSTIFY, OKAY?

THE COURT: UNLESS MR. GEE IS PREPARED TO COME IN AND TESTIFY, THE COURT CANNOT CONSIDER THAT EVIDENCE.

THE WITNESS. BUT IN CASE THE .. OKAY. IN CASE THE OPPOSING PARTY, THEY HAVEN

TIVEN US AN APPRAISAL.

THE COURT: THEY WOULD HAVE TO BRING IN THEIR EXERT TOO.

THE WITNESS: OKAY. THEN WHERE IS THE OPPOSING PARTY'S APPRAISAL?

THE COURT HE MAY NOT FIGURE HE NEEDS IT AT THIS POINT.

MR. HWANG: NO, I CAN USE IT AS A ..

THE COURT: BOTH OF THEM ARE HEARSAY. UNLESS THERE IS A STIPULATION THAT AN APPRAISAL CAN COME INTO EVIDENCE BY

THE
WESTERN GROUP
A Professional Real Estate Firm
REO Division
Craig Finlayson, Director
12474 Central Avenue
Suite B
Chino, CA 91710
(909) 613-5522
Dax(909) 464-8050

FEBRUARY 15, 1995

TO WHOM IT MAY CONCERN:

THE WESTERN GROUP WAS THE LISTING AGENT FOR THE PROPERTY AT

2524 PROSPECT

UPLAND, CA

THIS PROPERTY WAS SOLD AND CLOSED ESCROW ON MAY 13, 1994 FOR $320,000.

SINCERELY,

CRAIG FINLAYSON by Patti Harris

CF:ph

Order No.:03-325324-16

ORDER NO. 1243762 CORPORATION GRANT DEED

ESCROW NO.947000-JJ PARCEL NO.1003-141-03

The undersigned declares that the documentary transfer tax is $ 352.00 and is X computed on the full value of the interest of property conveyed, or is ___ computed on the ful value less the value of liens or encumbrances remaining thereon at the time of sale.

The land, tenements or really is located in

___unincorporated area X City of UPLAND and,

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

FIRST NATIONAL BANK OF CHICAGO,AS TRUSTEE

hereby GRANT(S) to

RAYMOND HOLDRIDGE AND CARMEN HOLDRIDGE,

I. V.

Husband and Wife as Joint Tenants

the following described real property in the City of Upland, County of San Bernardino, State of California.

Lot 3 Block 42 San Antonio Heights as per map recorded in Book 4 Page 48 of maps in

the County Recorder of said county.

Dated:January 6,1994
STATE OF CALIFORNIA.
COUNTY OF LosAngeles
On February 15, 1994
before me,
Janine D. Pratt,
Notary Public(insert name/title of the officer), personally appeared.

FIRST NATIONAL BANK OF CHICAGO, As Trustee/RESIDENTIAL FUNDING CORPORATION,
Attorney-in-Fact
By:

_____
Steven W. Allison -
Asst. Vice Pres.

ACIS CIVIL CASE NBR C 0389727

SEARCG DATE: 092324 SEARCH TABLE:
****

Judgment still not entered yet. - 2/9/95.

Terry Wittenborn
FEB. 09 1995

IN THE

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

DAVID L. C. HWANG	)	NO. RCV 53812
VS.	)	CLERK'S NOTIFICATION
	)	OF FILING NOTICE OF
ROBERT G. HARRIS, ET AL.,	)	APPEAL (Rule 1(b), Rules on Appeal).

TO: DAVID L. C. HEANG
650 S. Gilbuck Dr.,Anaheim, CA 92802

JAMES E. KLINKERT OF RITCHIE, KLINKERT & McCALLION
3281 E. Guasti R'd., Suite 850
Ontario, CA 91761

LORI JOHNSON OF JOHNSON REALTY
2436 N. Euclid Ave., Upland,CA 91786

YOU WILL PLEASE TAKE NOTICE THAT on February 15, 1995, David L. C. Hwang IN THE ABOVE ENTITLED ACTION, FILED with the Clerk of this court a Notice of Appeal from

THE (PROPOSED) JUDGMENT, HAS NOT YET BEEN ENTERED IN FAVOR OF DEFENDANTS ROBERT G. HARRIS ETC. AND AGAINST PLAINTIFF, DAVID L.C. HWANG AND FROM THE MOTION TO VACATE THE JUDGMENT AND TO MOVE

FOR A NEW TRIAL BY ANOTHER JUDGE, WHICH WAS DENIED AT THE HEARING IN THE DEPARTMENT 8 OF THE COURT ON JANUARY 18, 1995 IN VIOLATION OF CALIFORNIA CODES OF CIVIL PROCEDURE.

ALL Appeals are processed in the Central Division of the County Clerk's Office. Designations, Fees, and any documents relating to the appeal are to be submitted directly to: COUNTY CLERK'S OFFICE
APPEALS DIVISION/1ST FLOOR
351 NORTH ARROWHEAD AVENUE
SAN BERNARDINO,CA 92415-0210

Dated: March 28, 1995 County Clerk

By_____
Deputy Clerk

CLERK'S NOTIFICATION OF FILING NOTICE OF APPEAL (Rule 1(b), Rules on Appeal)

No. Shares 0.25 No.A 8838

2000 Ft.

INCORPORATED OCTOBER 25, 1882
AUTHORIZED CAPITAL STOCK $1,500,000
15,000 shares PAR VALUE $100

San Antonio Water Company

UPLAND, CALIFORNIA

Dated: July 13 1979

This
Certifies

That Robert G. Harris and Anne M.Harris
is the record holder, entitled to represent, and (subject to conditions printed on reverse side hereof) NO One(If no pledge is to be registered) is registered as pledgee of One Quarter - - - - - - - - - -
each of the par value of One Hundred Dollars, of the Capital Stock.

San Antonio Water Company
a corporation organized under the laws of the State of California, for the purpose (in addition to any others) of supplying water to its shareholders.

SECRETARY PRESIDENT

No. Shares 0.25 No.A 8886
2200 ft.

INCORPORATED OCTOBER 25, 1882
AUTHORIZED CAPITAL STOCK $1,500,000
15,000 SHARES PAR VALUE $100

San Antonio Water Company
UPLAND, CALIFORNIA

Dated: September 17, 1979

This

Certifies

That Robert G. Harris and Anne M.Harris

is the record holder, entitled to represent and (subject to conditions printed on reverse side hereof) No One (If no pledge is to be registered) is registered as pledgee of One Quarter - - - - - - - - - -

each of the par value of One Hundred Dollars, of the Capital Stock.

San Antonio Water Company

a corporation organized under the laws of the State of California, for the purpose (in addition to any others) of supplying water to its shareholders.

SECRETARY PRESIDENT

PARTIAL MASTER APPRAISAL DOCUMENT

(complete one, please see Page 11
of the County Clerk's Transcript)

PARCEL NO: 1003-141-03-0000

PSH023/TRANS 09/07/88

89010 NBR 819959300000 062288

SITUS NUMBER	STREET NAME	SUFF	COMM	ZIP
2524	PROSPECT	DR	UPL.	91786

RCNLD	RCN	ENTRY	CORRECTION	ITEM	
99139	10546	3096	2592	IND	VALUE 300,000

COUNTY ASSESSOR

320 EAST "D" STREET (208)

ONTARIO, CA 91764-4190